

Decision **DRAFT DECISION OF ALJ O'DONNELL** (Mailed 12/14/01)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific-South Telecom, Inc. for Registration as an Interexchange Carrier Corporation Pursuant to the Provisions of Public Utilities Code Section 1013.

Application 99-04-028
(Filed June 1, 2001)

O P I N I O N

I. Summary

Pacific-South Telecom, Inc. (Applicant) asks the Commission to modify D. 00-10-009 to say that it may use 40 specified service marks. We deny the petition because it addresses an issue that was not addressed in the decision, or the underlying record.

II. Discussion

By Decision 00-10-009, Applicant was granted a Certificate of Public Convenience and Necessity to resell interexchange telecommunications services. The decision adopted a settlement between the Commission's Consumer Services Division and Applicant whereby Applicant is prohibited from using the fictitious names of its affiliates, and is limited to the use of specified fictitious names.

III. Applicant's Petition

Applicant asks the Commission to modify D. 00-10-009 to say that it may use 40 specified service marks. Applicant intends to use service marks to occupy positions in the default assignment system (system) operated by Pacific

Bell Telephone Company (Pacific). The system is used by Pacific to assign calls from pay telephones to interexchange carriers where the caller expresses indifference to which interexchange carrier is used. The system assigns calls to a list of carriers. By the use of service marks, Applicant intends to have 40 additional entries on the list. As a result, it will receive 40 times the number of referrals it would receive with just its current name on the list. Applicant says that its use of service marks was addressed in Advice Letter No. 2 which was filed on January 17, 2001, and approved on or about April 2, 2001. Applicant requests the modification “establishing the legal relationship between Petitioner and its service marks and approving the use of the service marks in the manner described in the petition...” It represents that service marks are not fictitious names.

IV. Discussion

Rule 47 (a) of the Commission’s Rules of Practice and Procedure states “A petition for modification asks the Commission to make changes to the text of an issued decision.” However, Applicant proposes that the decision be modified to address an issue, service marks, which was not addressed in the decision, or in the underlying record. As such, it is not appropriate for a petition to modify. Therefore, we will deny the petition. If Applicant wants to pursue its request, it should file an application. We note that since Applicant says that Advice letter No. 2 was approved, it appears that it already has the requested approval.

V. Comments on Draft Decision

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Public Utilities Code Section 311(g)(1) and Rule 77.7 of the Commission’s Rules of Practice and Procedure.

Findings of Fact

1. A notice of the petition appeared in the Daily Calendar on June 4, 2001.
2. No comments on the petition were filed.
3. A hearing is not required.
4. The issue of service marks was not addressed in D.00-10-009, or the underlying record.

Conclusion of Law

The petition should be denied.

O R D E R

IT IS ORDERED that:

1. The petition of Pacific-South Telecom, Inc. to modify Decision 00-10-009 is denied.
2. This application is closed.

This order is effective today.

Dated _____, at San Francisco, California.